

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Pat Kiley,

Plaintiff,

v.

Dan Browning, et. al

Defendants.

Civil No. 10-3034 PAM/SRN

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CLERK
U.S. DISTRICT COURT
MINNEAPOLIS, MINNESOTA

RESPONSE TO COURT'S ORDER

Now comes Plaintiff Pat Kiley, pro se, and responds to this court's order as follows:

1. **Court Order.** The court's November 16, 2009 order indicates the following:

"ORDER: Accordingly, counsel for plaintiff is directed to: 1. Notify defense counsel immediately that he/she is required to make an appearance or move for an extension of time to do so; 2. File an application for entry of default unless the required pleading is filed within 10 days; or 3. Advise the Court in writing of any good cause to the contrary. Unless plaintiff's counsel complies with this order within 20 days of this date, this case will be dismissed for lack of prosecution."

2. **Amended Complaint:** First, Plaintiff cannot notify defense counsel because he never served the original complaint. A First Amended Complaint was filed on November 15 and service was sent by certified mail. Immediately Dan Browning and the Star Tribune ducked service and refused to accept the certified mail. Plaintiff is waiting for the certified mail return receipts mailed to the other defendants. Second, an application for entry of default cannot be filed until the defendants have been served and have had an opportunity to answer or otherwise plead. Third, counsel is informing the court of good cause to the contrary within the 20 days given by the court for the response in order to avoid a dismissal for lack of prosecution.

3. **Good Cause:** Looking forward, The First Amended Complaint saved the courts valuable time by subverting attempts of the defendants to file motions to dismiss based on

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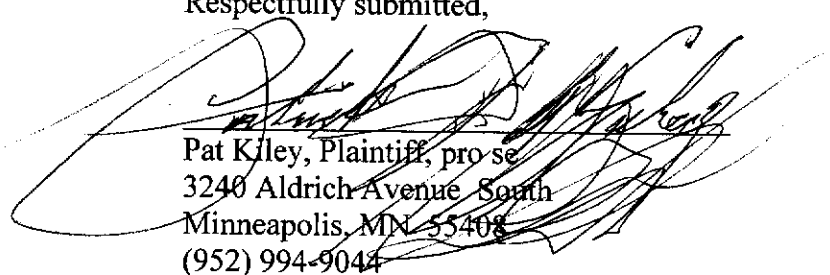
jurisdiction and other issues. The amended complaint solidified federal jurisdiction through both diversity (an original individual defendant and a new corporate defendant are both out of state) and federal question jurisdiction i.e. the Fourteenth amendment "stigma- plus" defamation coupled with an allegation of the "taking of property without due process of law. Further, on a substantive level the amended complaint removed defendants who were misled by defendant Dan Browning and the Star Tribune when they failed to correct a previous defamatory statement that Plaintiff had traveled overseas to squander money.

4. **Federal Marshals:** Since defendants Dan Browning and the Star Tribune have ducked service and refused to accept the certified mail delivery of the amended complaint, Plaintiff requests that the court appoint federal marshals to serve Browning and his employer the Star Tribune.

Now Plaintiff prays for an order of this court stating the following:

- A. extend the time for service on the defendants for another 90 days, and
- B. appoint federal marshals to service Dan Browning and the Star Tribune at their expense.

Respectfully submitted,



Pat Kiley, Plaintiff, pro se
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